MONTANA LEGISLATIVE HISTORY

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Chapter 431 1977

Bill H 280 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1-25	___C	Hearing Date(s)	3-29	___C
	1-28	___C		_____	___C
	_____	___C		_____	___C
	_____	___C		_____	___C
Date Out	1-28	___C	DATE out	3-29	

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 228	act to amend- relating to notice and publication of petitions for change of names of persons.	1-18	Hand	1-24 Monday	do not pass	Weds 26th
HB 310	to provide for extension of action on permits to appropriate surface water, etc., Yellowstone River Basin, etc.	1-20	Day	Tuesday 25	"WATER" do pass as amended	1-28
HB 279	CERTIFICATE OF MERIT IN CIVIL SUITS FOR MEDICAL MALPRACTICE & to provide for sanctions against plaintiffs attorney, etc.	1-20	Scully	Tuesday 1st	do not pass	2-15
HB 280	provide for a specific time period in which a criminal charge may be amended by prosecution etc.	1-20	Scully	Tuesday 25	do pass as amended	1-28
HB 291	act to make the obscuring of the identity of a weapon a crime -	1-20	Gilligan	Tuesday 25	pass for day Friday 28th do pass as amended	2-11
HB 313	act requiring forfeiture of a motor vehicle involved in an accident when proof of financial responsibility,	1-21	Fagg	Weds 26	hold for 316 do not pass	2-11

H BILL NO. 280

INTRODUCED BY Sully Ramirez Kimble

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A SPECIFIC TIME PERIOD IN WHICH A CRIMINAL CHARGE MAY BE AMENDED BY THE PROSECUTION WITHOUT LEAVE OF THE DISTRICT COURT AS TO MATTERS OF SUBSTANCE AND TO LIMIT SUCH AMENDMENTS TO ONE OCCASION; AMENDING SECTION 95-1505, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 95-1505, R.C.M. 1947, is amended to read as follows:

"95-1505. Amending the charge. (a) A charge may be amended once in matters of substance at any ~~time before the defendant pleads~~ not less than 15 days before trial, without leave of court.

(b) The court may permit any charge to be amended as to form at any time before verdict or finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

(c) No charge shall be dismissed because of a formal defect which does not tend to prejudice a substantial right of the defendant."

-End-

INTRODUCED BILL

HB280

JUDICIARY COMMITTEE
January 25, 1977

The regularly scheduled meeting of the House Judiciary Committee was held at 8:00 a.m. with Chairman Scully presiding on January 25, 1977, in room 436 of the Capitol Building, Helena, Montana. All members were present with the exception of Representative Kennerly.

Scheduled for hearing were House Bills #280, 291, and 320.

The hearing opened on House Bill #291:
REPRESENTATIVE GILLIGAN, DISTRICT #38:
This bill simply deals with the matter of concealing or obscuring the identity or altering the serial number or any other distinguishing identification number on an article or vehicle.

PROPONENT, BERT KRONIN, COUNTY ATTORNEYS COORDINATOR:
This is merely a housekeeping matter. It clears up some discrepancies.

THE HEARING CLOSED ON HOUSE BILL #291.

THE HEARING OPENED ON HOUSE BILL #280:
CHAIRMAN SCULLY turned the meeting over to the vice-chairman, Representative Teague in order to present the bill, of which he is chief sponsor.

REPRESENTATIVE SCULLY, DISTRICT #76:
This bill will provide a specific time period in which a criminal charge may be amended by the prosecution as to matters of substance and to limit such amendments to one occasion. This came about as a reaction to a supreme court case. The case involved an aggravated assault. He went on to explain the details and circumstances of the case and the resultant decision. It concerned the proving of serious bodily harm and it was asked that it be changed to intent of serious bodily harm. It was necessary to prove apprehension of serious bodily harm, instead of serious bodily harm. He explained the difference. This bill will allow the county attorney any time before 15 days before the trial to amend once in matters of substance, so you can clear up any mistake of misinformation. You can't be always sure that you are completely accurate. The trial is to arrive at the truth.

PROPONENT, TOM HONZEL, DEPUTY COUNTY ATTORNEY:
Representative Scully has outlined the problem. I think the important thing to remember in the bill is the rights of the defendant. The purpose of the document is to give the defendant time so that the defendant knows what he is charged with. We are not violating any substantive rights of the defendant.

OPPONENT, WILLIAM LEAPHART, MEMBER OF THE MONTANA CRIMINAL DEFENSE LAWYERS:
He mentioned an amendment to the code of criminal procedure. You cannot change any matters of substance but matters of form. There are several drawbacks. 1. This bill extends the 5+ years to file a criminal

proceeding. 2. It allows to automatically amend without the courts permission. 3. It works to the prejudice of an accused person. 4. One of the other sections 95-1803 provided 10 days if he enters a plea, if he gives notice of alibi. 5. the criminal defendant has no corresponding right to change the plea. He can only change the plea if he is once into court, if for some reason the plea was not freely given. Essentially this bill does not do anything that is not already available to the prosecution. I recommend this bill do not pass.

REPRESENTATIVE SCULLY:
In closing, this bill allows some practicality and some speed. Dismissal of a case handles all five of the points presented by Mr. Leaphart, if you take the position that dismissal will solve all these arguments. Reality and practicality tells you that you amend the information. Usually on a case the defendant is already in jail. The prosecution is by law to bring them immediately to a speedy trial. I see no point in starting over by dismissing the case. I think this is the place to take care of the problem. You don't have 15 days before a trial if the plea is guilty. This is not practical in handling the arrest and prosecution charge that we have made. He then discussed the errors of form and elements of the crime that could be involved. He again stated the case that had caused the bill to be introduced. The only way you can overturn that type of supreme court decision is through a statutory change.

Then followed discussion about various types of charges, elements of the crime, whether the same charge or not, the difference in whether a change in form or in substance, the different penalty, etc.

REPRESENTATIVE SCULLY explained the documents involved if necessary to start over, etc.

TOM DOWLING:
93% of the people in jail have not been convicted of any crime.

REPRESENTATIVE HOLMES:
Would adding the workds, "with leave of court solve the problem?"

Mr. LEAPHART:
Yes, it would help.

No further questions, the hearing closed on House Bill #280.

THE HEARING OPENED ON HOUSE BILL #320:
REPRESENTATIVE RAMIREZ, DISTRICT #64:
This bill is concerned with comparative negligence. If a person is injured by the negligence of someone else but if they also contributed to the negligence, that has been changed. He gave examples, such as 80 to 20 percent of negligence, etc. It left many questions about

JUDICIARY COMMITTEE

EXECUTIVE SESSION
January 28, 1977

The House Judiciary Committee went into executive session at 10:30 a.m. following the regular meeting in room 436 of the Capitol Building, Helena, Montana on Friday. Chairman Scully presided. All members were present with the exception of Representatives Colburn and Kennerly.

HOUSE BILL #117:
REPRESENTATIVE TEAGUE moved to amend page 1, line 7, page 1, line 18, and page 2, lines 16 and 21.

Amend page 1, line 18.
Following: "delegate"
Strike: "this"
Insert: "to the"

Amend page 1, line 7.
Following: "committee"
Insert: "or committees"

Amend page 2, lines 16 and 21.
Insert: "or committees"

The motion to amend carried with the vote unanimous.

REPRESENTATIVE LORY moved "do not pass".
REPRESENTATIVE COURTNEY moved a sub-stitute motion "do pass as amended". The substitute motion failed with 9 representatives voting "no" and 6 representatives voting "yes".

Then followed discussion about the intent of the bill. Chairman Scully explained how the interim committee works.

Representative Lory commented that he was reluctant to give the committee that much power.

The question was called and the motion "do not pass". carried.

Yes		No	
Conroy	Dussault	Baeth	Courtney
Hand	Holmes	Day	Keyser
Eudaily	Lory	McLane	Teague
Ramirez	Roth		
Scully			

Representative Seifert had left and did not vote.

HOUSE BILL #280:
REPRESENTATIVE KEYSER moved to amend page 1, lines 6 and 16, to strike, "without, leave of court" and insert, "with leave of court". The motion carried with the vote unanimous.

REPRESENTATIVE CONROY moved "do pass as amended". REPRESENTATIVE HOLMES moved a substitute motion to amend line 15, following, "time" insert, a comma. After some discussion she withdrew her motion.

Discussion followed, that the change might prejudice the court, if the word without was inserted for "with". It was decided to leave it as amended.

The question was called and the motion carried with Representative Dussault voting "no".

HOUSE JOINT RESOLUTION #26:
REPRESENTATIVE DAY moved adoption of the committee report from the sub-committee on water, "do pass". The motion carried with the vote unanimous.

The meeting adjourned at 11:50 a.m.

JOHN P. SCULLY, CHAIRMAN

Mary Ellen Connelly

Mary Ellen Connelly, Secretary

FORTY-FIFTH LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
H.B. 79	2-4-77	3-4-77	4-19-77				4-19-77		
H.B. 80	1-25-77	3-3-77	3-16-77					3-16-77	
H.B. 116	1-27-77	3-10-77	3-16-77					3-16-77	
H.B. 164	1-27-77	3-10-77	3-29-77					3-29-77	
H.B. 177	1-25-77	3-8-77	3-24-77					3-24-77	
H.B. 200	3-5-77	3-28-77	Tabled 3-30-77						
H.B. 202	1-27-77	3-4-77	3-4-77				3-4-77		
H.B. 226	2-2-77	2-21-77	3-12-77					3-12-77	
H.B. 238	3-11-77	3-22-77	3-24-77						3-24-77
H.B. 243	2-23-77	3-25-77	Tabled 3-31-77						
H.B. 247	2-24-77	3-18-77	3-18-77					3-18-77	
H.B. 251	2-21-77	3-25-77	3-31-77					3-31-77	
H.B. 260	2-21-77	3-9-77	3-19-77				3-19-77		
H.B. 261	4-6-77	4-8-77	Referred to Fin. & Clms. 4-12-77			Comm.			
H.B. 280	2-5-77	3-29-77	3-29-77					3-29-77	
H.B. 291	2-19-77	3-16-77	3-16-77				3-16-77		

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 29, 1977

The meeting of this committee was called to order on the above date by Senator Turnage, Chairman, at 9:35 a.m. in Room 415 of the State Capitol Building.

ROLL CALL:

All committee members were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Rep. Scully - Bozeman
Tom Honzel - County Attorneys Assn.

CONSIDERATION OF HOUSE BILL 280:

Rep. Scully of Bozeman, sponsor of the bill, said that this bill would provide a specific time period in which a criminal charge may be amended by the prosecution without leave of the district court. He said that the House had put in an amendment to make the bill read "with leave of court" and he would like to have this committee amend it back out by reinserting the word "without" and striking "with".

Tom Honzel, representing the County Attorneys Assn., appeared as a proponent of the bill. He gave a copy of the Uniform Rules to the committee and asked that this bill be amended to reflect these rules. (See Exhibit 1). He said that the emphasis is based on the conduct of the defendant and asked what conduct he is being charged with. This bill does not violate the double jeopardy clause of our constitution.

There were no opponents to the bill.

In answer to a question by Sen. Turnage, Rep. Scully said that 5 days would be much better than 15 days.

Sen. Towe then moved amend line 16 by changing the figure to "5" from "15". The motion carried unanimously.

Sen. Olson moved to strike "with" and insert "without". The motion carried with Sen. Towe voting "No".

Sen. Warden then moved that HB 280 as amended BE CONCURRED IN. The motion carried unanimously.

EXECUTIVE SESSION

HB 761 - Sen. Warden moved BE NOT CONCURRED IN. The motion carried with Sen. Murray voting "No" and Sen. Towe abstaining.

HB 320 - Sen. Regan moved that HB 320 BE NOT CONCURRED IN. The motion carried unanimously.

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 1-29-77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret	✓		

Each day attach to minutes

avoid an unnecessary trip to the court house. See ALI Model Code of Pre-Arraignment Procedure § 130.3 (T.D. # 6, 1974).

Clause (3) allows filing of the information "promptly thereafter" as well as "by the time of his appearance before a [magistrate]," because a prosecutor may not be available by the time of appearance. In that event, Rule 311(4), *infra*, would require a writing stating the essential facts constituting the offense charged and citing the provision of law allegedly violated. *Compare* ALI § 310.1(2) (T.D. # 5, 1972); former Uniform Rule 6(a); F.R. Crim.P. 5(a); Alaska R.Crim.P. 5(a); Colo.R.Crim.P. 5(a)(1); Maine R.Crim.P. 5(a); Mont.Rev. Codes § 95-901(b); Nev.Rev.Stat. § 171.178(1); N.J.Rules of Court 3:4-1; Wis.Stat. § 970.01(2).

(g) Amendment.

(1) *Before trial.* If trial has not commenced, the prosecuting attorney may amend the information to allege, or to change the allegations regarding, any offense arising out of the same alleged conduct of the defendant that gave rise to any offense alleged or attempted to be alleged in the original information.

Comment

Because the information under these Rules is prepared earlier and when the prosecuting attorney has less facts than is generally true with the traditional information, pretrial amendment is freely permitted. This provision is similar in concept to Calif. Penal Code § 1009, Mont.Rev. Codes § 95-1505(a), and Wis.Stat. § 971.29(1). Compare Colo.R. Crim.P. 7(e); La.Code Crim.P. art. 487(A); N.Y.Crim.P.Law § 100.45(3).

(2) *After commencement of trial.* After commencement of trial, the court may permit the prosecuting attorney to amend the information at any time before verdict or finding if no additional or different offense is charged and substantial rights of the defendant are not thereby prejudiced. An amendment may charge an additional or different offense with the express consent of the defendant.

Comment

The first sentence hereof is similar in effect to Colo.R.Crim.P. 7(e) and Mont.Rev.Codes § 95-1505. Compare La.Code Crim. P. 487(A). A number of provisions apply this "at any time before verdict or finding if no additional or different offense is charged and substantial rights of the defendant are not thereby prejudiced" standard to *all* amendments, not just those after commencement of trial. See former Uniform Rule 18; F.R.Crim.P. 7

(e); Alaska R.Crim.P. 7(e); Maine R.Crim.P. 7(e); Nev.Rev. Stat. § 173.095; N.J.Rules of Court 3:7–4.

The last sentence hereof covers situations where the defendant wishes to *stand trial* on a different offense (even though it is not a "lesser included offense") as well as where he wishes to plead guilty to a different offense. The latter situation is covered by La. Code Crim.P. art. 487(B).

(3) *Continuance.* The defendant shall be granted any extension of time, adjournment, or continuance reasonably necessitated by an amendment.

Comment

This is comparable to Calif. Penal Code § 1009, La.Code Crim. P. art. 489, N.J.Rules of Court 3:7–4, N.Y.Crim.P.Law § 100.45 (3), and Pa.R.Crim.P. 220.

(h) Dismissal by prosecuting attorney. The prosecuting attorney may dismiss the information or any count thereof by filing a notice of the dismissal. The notice shall state the reasons for the dismissal. The dismissal is with prejudice only if trial has commenced or the court has approved a stipulation for dismissal with prejudice. While a motion for a pretrial judgment of acquittal under Rule 481 is pending, the prosecuting attorney may dismiss the information only with consent of the defendant.

Comment

The first sentence is to the same effect as provision in Alaska R.Crim.P. 43(a) and La.Code Crim.P. art. 691. As stated in 3 Wright—Federal Practice & Procedure § 812 (1969):

> It is difficult indeed to see any real or substantial change or benefit achieved by [requiring court approval]. The court is powerless to compel a prosecutor to proceed in a case which he believes does not warrant prosecution. If the court refuses consent to dismiss, the prosecutor in his opening statement to the jury and in his presentation of evidence can indicate to the jury the considerations that should work an acquittal.

The second sentence is in line with ABA Standards, The Prosecution Function 4.4 (Approved Draft, 1971), Colo.R.Crim.P. 48 (a), Maine R.Crim.P. 48(a), Mont.Rev.Codes § 95–1703(1), and Tex.Code Crim.P. art. 32.02, and is designed to increase the visibility of the dismissal decision.

Under the third sentence, dismissal with prejudice can occur only at a time of high visibility—after trial has commenced or if the court approves. As to the after trial has commenced feature, this is to the same effect as

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SENATE Judiciary COMMITTEE

H BILL 280 VISITORS' REGISTER DATE 2-24-77

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
[illegible]	County Attorneys	[illegible]	[illegible]	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

March 30, 1977

SENATE
STANDING COMMITTEE REPORT
Committee on Judiciary

That House Bill No. 280, third reading, be amended as follows:

1. Amend title, line 6.
Following: "~~WITHOUT~~"
Strike: "WITH"
Insert: "WITHOUT"

2. Amend page 1, section 1, line 16.
Following: "than"
Strike: "15"
Insert: "5"

3. Amend page 1, section 1, line 17.
Following: line 16
Strike: "WITH"
Insert: "without"

HOUSE BILL NO. 280

INTRODUCED BY SCULLY, RAMIREZ, KIMBLE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A SPECIFIC TIME PERIOD IN WHICH A CRIMINAL CHARGE MAY BE AMENDED BY THE PROSECUTION ~~WITHOUT~~ ~~WITH~~ WITHOUT LEAVE OF THE DISTRICT COURT AS TO MATTERS OF SUBSTANCE AND TO LIMIT SUCH AMENDMENTS TO ONE OCCASION; AMENDING SECTION 95-1505, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 95-1505, R.C.M. 1947, is amended to read as follows:

"95-1505. Amending the charge. (a) A charge may be amended once in matters of substance at any time, ~~before the defendant pleads~~ not less than ~~15~~ 5 days before trial, ~~without~~ ~~WITH~~ WITHOUT leave of court.

(b) The court may permit any charge to be amended as to form at any time before verdict or finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

(c) No charge shall be dismissed because of a formal defect which does not tend to prejudice a substantial right of the defendant."

-End-

REFERENCE BILL

HB280